

STATE MS.-DESOTO CO.  
FILED  
DEC 31 3 37 PM '96

STATE OF MISSISSIPPI

Desoto COUNTY

BK 310 PG 748  
W.E. DAVIS CH. CLK.

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW-INCOME HOUSING TAX CREDITS**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING TAX CREDITS (this "Agreement"), dated as of December 14, 1994, by and between OakRidge/Southaven, L.P. (the "Owner"), and the Mississippi Home Corporation (MHC) an instrumentality of the State of Mississippi.

**WITNESSETH:**

WHEREAS, the Owner is or shall be the owner of a rental housing development located on lands in the City/Town/County of Southaven, Desoto Co., State of Mississippi, more particularly described in Exhibit A hereto, known as or to be known as Oak Ridge Apartments (the "Project"); and

WHEREAS, MHC has been designated by the Governor of the State of Mississippi as the housing agency for the State of Mississippi for the allocation of low-income housing tax credit dollars (the "Credit"); and

WHEREAS, the Owner has represented to MHC in Owner's Low-Income Housing Tax Credit Application dated June 30, 1994 (the "Application") that Owner shall lease a minimum of 40% of the units in the Project to individuals or families whose income is 60% or less of the area median gross income (including adjustments for family size) ("Low-Income Tenants"), as determined in accordance with Section 42 of the Internal Revenue Code of 1986 ("Section 42"); and

WHEREAS, the Owner has represented to MHC in the Application that it will covenant to maintain the Section 42 rent and income restrictions for a minimum period of 0 years after the close of the initial 30 year compliance period; and

WHEREAS, Section 42 requires, as a condition precedent to the allocation of the Credit, that the Owner and MHC execute, deliver and record this Agreement in the real estate records of the Probate Office of the county in which the Project is located in order to create certain covenants running with the Project for the purpose of enforcing the requirements of Section 42 and MHC occupancy restrictions found in Section 5 hereof by regulating and restricting the use and occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Owner, by this Agreement, intends, declares and covenants that the restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project for the term stated herein and are binding upon all subsequent owners of the Project for such term, and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and MHC agree as follows:

#### SECTION 1 - DEFINITIONS

All words and phrases defined in Section 42 and by Treasury or HUD regulations pertaining thereto and/or promulgated thereunder shall have the same meanings in this Agreement.

#### SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE PROJECT

- (a) Upon execution and delivery by the parties hereto, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the real estate records in the Probate Office of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Prior to recording, the Owner shall provide MHC with an executed copy of this Agreement. Upon recording, the Owner shall provide MHC with the executed original of the recorded Agreement showing the Probate Office's time and date stamp and all pertinent recording data.
- (b) The Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project that, during the term of this Agreement, this Agreement and the covenants and restrictions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Project, encumbering the Project for the term of this Agreement, binding upon the Owner's successors in title and all subsequent owners and operators of the Project or of any part thereof, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner (and the benefits shall inure to MHC and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Agreement. The Owner and MHC hereby agree that any and all requirements of the laws of the State of Mississippi to be satisfied in order for the provisions of this Agreement to constitute valid, binding and enforceable restrictive covenants running with the Project shall be deemed to be satisfied in full, or, in the running with the Project shall be deemed to be satisfied in full, or, in the alternative, that an equitable servitude has been created to insure that these restrictions run with the Project. For the longer of the period the Credit is claimed or the term of this

Agreement, each and every mortgage, lease, deed or other instrument hereafter executed conveying or encumbering the Project or any portion thereof shall expressly provide that such conveyance or encumbrance is subject to this Agreement, provided, however; the covenants contained herein shall survive and be effective regardless of whether such mortgage, lease, deed or other instrument hereafter executed conveying or encumbering the Project or any portion thereof provides that such conveyance is subject to this Agreement.

### SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents, covenants and warrants to MHC as follows:

- (a) The Owner (i) is a partnership or corporation duly organized, existing and in good standing under the laws of the State of Mississippi and is qualified to transact business under the laws of the State of Mississippi, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.
- (b) The execution, delivery and performance of this Agreement by the Owner (i) will not violate any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (ii) will not violate any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Owner has good and marketable title to the Project free and clear of any lien or encumbrance except this Agreement and the matters shown in the Application.
- (d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting the Owner or the Project, or any of the Owner's properties or rights, which, if adversely determined, would materially impair the Owner's right to carry on business substantially as now conducted (and as contemplated by this Agreement) or which would materially and adversely affect its financial condition or which would impair the use of the Project as contemplated by this Agreement.
- (e) The Project constitutes or will constitute a qualified low income building or qualified low income project, as applicable, as defined in Section 42 and applicable regulations.

- (f) Each unit in the Project contains or will contain upon completion of construction, complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless) which are to be used on other than a transient basis.
- (g) During the term of this Agreement, all units subject to the Credit shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g).
- (h) During the term of this Agreement, each low income unit will remain suitable for occupancy and will be used other than on a transient basis.
- (i) Subject to the requirements of Section 42, the regulations promulgated thereunder and this Agreement, the Owner may sell, transfer or exchange the entire Project at any time, but the Owner shall, as a condition precedent to such sale, transfer or exchange, obtain and deliver to MHC the written agreement of any buyer or other party acquiring the Project or any interest therein that such acquisition is subject to this Agreement, Section 42 and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any low income portion of the Project. Even if such buyer or other person acquiring the Project or any interest therein fails or refuses to provide such written agreement, such acquisition (and all subsequent acquisitions which occur during the term of this Agreement) shall be subject to this Agreement, Section 42 and the applicable regulations.
- (j) The Owner agrees to notify MHC in writing at least thirty (30) days in advance of any sale, transfer or exchange of the entire Project or any low income portion of the Project. Within thirty (30) days of the closing of such sale, transfer or exchange, the Owner shall provide MHC a complete copy of all the closing documents (with evidence of recording satisfactory to MHC on all recorded documents).
- (k) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.
- (l) If the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in

- accordance with the terms of this Agreement.
- (m) The Owner has not executed, and will not execute, any other agreement with provisions contradictory to, or in opposition to this Agreement. This Agreement is paramount and controlling as to the rights and obligations herein set forth and supersedes any other requirements in conflict herewith.

#### SECTION 4 - INCOME RESTRICTIONS; RENTAL RESTRICTIONS

The Owner represents, warrants and covenants to MHC throughout the term of this Agreement and in order to satisfy the requirements of Section 42 of the Code ("Section 42 Occupancy Restriction") that:

- (a) (1) \_\_\_\_\_ At least 20% or more of the residential units in the Project are both rent-restricted and occupied by individuals whose income is 50% or less of area median income.
- (2) X At least 40% or more of the residential units in the Project are both rent-restricted and occupied by individuals whose income is 60% or less of area median income.

(Check applicable percentage election)

- (b) The determination of whether a tenant meets the low-income requirement shall be made by the Owner at least annually on the basis of the current income of such Low-Income Tenant.

#### SECTION 5 - MHC EXTENDED OCCUPANCY RESTRICTIONS

This Section is intended to make enforceable those extended use covenants which the Owner represented to the MHC in its Application.

The Owner represents, warrants and covenants to MHC throughout the term of this Agreement that:

(Check if applicable)

- \_\_\_\_\_ The Owner will agree to extend the Section 42 income and rental restrictions for \_\_\_\_\_ additional years after the close of the initial 30 year compliance period, thus postponing the Owner's option to terminate this Agreement as set out in Section 6(c) of this Agreement for such additional \_\_\_\_\_ years.

#### SECTION 6 - TERM OF AGREEMENT

- (a) Except as hereinafter provided, this Agreement shall commence with the first day on which any building which is part of the Project is placed in service as low-income housing and shall end on the date which is 30 years after such commencement date.
- (b) In addition to subsection (a) above, the Owner shall comply

with the requirements of Section 42, the regulations thereunder and this Agreement for an additional 0 years after the close of the initial 30 year compliance period, unless the Project is acquired by foreclosure or instrument in lieu of foreclosure.

- (c) Notwithstanding subsection (b) above, the Owner may request to terminate this Agreement by notifying MHC by registered mail. This written request for termination may be submitted any time after the end of the 14th year of the compliance period, unless the Owner agrees to extend the rental restrictions as specified in Section 5 of this Agreement. In such an event, the owner may request to terminate this Agreement as specified above any time beginning one year before the completion of the additional period of rental restrictions agreed upon in Section 5.

From the date of receipt, of the request to terminate, MHC has a one year period to find a buyer willing to purchase the property and maintain the low-income use. The price of the property is predetermined by the formula price outlined in Section 42.

If the Owner executes the request to terminate and MHC is unable to locate a buyer during the aforesaid one year period, for a period of three years following the termination of the extended use requirement, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to such low-income unit.

#### SECTION 7 - ENFORCEMENT OF OCCUPANCY RESTRICTIONS

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of MHC, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income Tenants which pertain to compliance with the occupancy restrictions specified in this Agreement.
- (b) The Owner shall submit any other information, documents or certifications requested by MHC which MHC shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the occupancy restrictions specified in this Agreement.

#### SECTION 8 - ENFORCEMENT OF SECTION 42 OCCUPANCY RESTRICTIONS

- (a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42, applicable regulations or this Agreement. Moreover, Owner covenants to take any lawful action (including amendment of this Agreement as may be

necessary, in the opinion of MHC) to comply with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, the Internal Revenue Service, or the Department of Housing and Urban Development from time to time pertaining to Owner's obligations under Section 42 and affecting the Project.

- (b) The Owner and MHC each acknowledge that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 of the Code and the applicable regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT MHC AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- (c) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by MHC and all persons interested in Project compliance under Section 42, this Agreement and the applicable regulations.
- (d) The Owner agrees that, if at any point following execution of this Agreement, Section 42 or regulations implementing said Section 42 require MHC to monitor the Section 42 occupancy restrictions, or, alternatively, MHC chooses to monitor Section 42 occupancy restrictions or MHC occupancy restrictions, the Owner will take any and all actions reasonably necessary and required by MHC to substantiate the Owner's compliance with the Section 42 occupancy restrictions or MHC occupancy restrictions and will pay a reasonable fee to MHC for such monitoring activities performed by MHC.

#### SECTION 9 - MISCELLANEOUS

- (a) Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- (b) Notices. All notices to be given pursuant to this Agreement shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

## TO THE AUTHORITY:

Mississippi Home Corporation  
207 West Amite Street, #13  
Jackson, MS 39201-1205

## TO THE OWNER:

OakRidge/Southaven, L.P.  
through its General Partner  
American Standard Communities, L.L.C.  
324 Poplar View Parkway, Suite B  
Collierville, Tennessee 38017

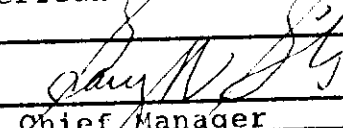
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MHC, and Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- (c) Amendment. The Owner agrees that it will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with Section 42 (or any other applicable provisions of the Internal Revenue Code of 1986), any and all applicable rules, regulations, policies, procedures, and rulings or other official statements pertaining to the Credit.
- (d) Subordination of Agreement. This Agreement and the restrictions hereunder are subordinate to the loan and loan documents, if any, on the Project except insofar as Section 42 of the Code requires otherwise.
- (e) Governing Law. This Agreement shall be governed by the laws of the State of Mississippi and, where applicable, the laws of the United States of America.
- (f) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation.
- (g) Recovery of Attorney's Fees. If MHC shall incur legal fees or other expenses in enforcing its rights and/or remedies, or the Owner's obligation, under this Agreement, the Owner shall reimburse MHC for those fees and other expenses within ten (10) days of receipt of written demand therefor.
- (h) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of MHC and the successors and assigns of Owner.



IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.  
OakRidge/Southaven, L.P. through its General Partner  
American Standard Communities, L.L.C.

By:  Gary R. Gibbs  
Its: Chief Manager

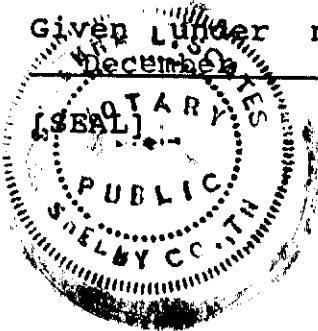
MISSISSIPPI HOME CORPORATION

By:   
Its: Executive Director

STATE OF TennesseeCOUNTY OF Shelby

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Gary R. Gibbs, whose name as Chief Manager of American Standard Communities, LLC, a Limited Liability Corporation is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such document, he as such officer and with full authority, executed the same voluntarily for and on behalf of said Limited Liability Corporation.

Given under my hand and official seal this 14 day of December, 19 94.



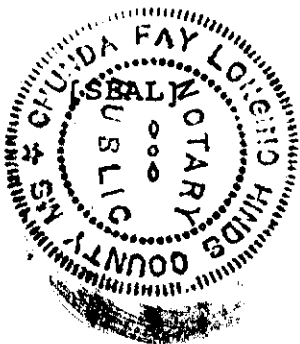
Susanna L. Scates  
Notary Public  
My Commission Expires: 6/25/96.

STATE OF MISSISSIPPI

COUNTY OF HINDS

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Neddle Winters, whose name as Executive Director of the Mississippi Home Corporation, an instrumentality of the State of Mississippi, has signed the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such document, he as such officer and with full authority, executed the same voluntarily for and on behalf of said corporation.

Given under my hand and official seal this 21st day of December, 19 94.



Chunda Fay Longino  
Notary Public  
My Commission Expires: My Commission Expires May 12, 1996

EXHIBIT "A"  
TO  
DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW-INCOME HOUSING TAX CREDITS  
DATED AS OF DECEMBER 14, 1994  
BY AND BETWEEN  
OAKRIDGE/SOUTHAVEN, L.P.  
AND MISSISSIPPI HOME CORPORATION

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All that certain real property (the "Property") lying and being situated in the City of Southaven, County of DeSoto, State of Mississippi, said Property being more particularly described as follows, to-wit:

Lots 1 and 2, Heritage Hills, P.U.D., Pine Ridge Apartments, Phase I in Section 26, Township 1 South, Range 8 West, City of Southaven, DeSoto County, Mississippi, as shown by plat appearing of record in Plat Book 48, Page 37, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Prepared By: Rob Starnes

KLARING COX  
50 NORTH FRONT STREET  
MEMPHIS, TN 38101

(901) 543-8009